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10 UNITED STATES DISTRICT COURT  
11 WESTERN DISTRICT OF WASHINGTON  
12 AT TACOMA

12 ADAN JOE NIETO,

13 Petitioner,

14 v.

15 ELDON VAIL,

16 Respondent.  
17

Case No. C09-5250 RBL/KLS

ORDER TO AMEND PETITION

18  
19 This habeas corpus petition has been referred to United States Magistrate Judge Karen L.  
20 Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Petitioner Adan Joe  
21 Nieto seeks federal habeas corpus relief pursuant to 28 U.S.C. § 2254. Dkt. # 3.

22 The Court notes that Mr. Nieto has failed to name the correct Respondent, thereby depriving  
23 this Court of personal jurisdiction. *United States v. Giddings*, 740 F.2d 770, 772 (9<sup>th</sup> Cir. 1984).  
24 28 U.S.C. § 2243 requires that writs are to be directed “to the person having custody of the person  
25 detained.” The proper respondent in a federal habeas corpus petition is the petitioner’s “immediate  
26 custodian.” *Demjanjuk v. Meese*, 784 F.2d 1114, 1115 (D.C.Cir. 1986). A custodian “is the person  
27 having a day-to-day control over the prisoner. That person is the only one who can produce ‘the

body' of the petitioner." *Guerra v. Meese*, 786 F.2d 414, 416 (D.C.Cir. 1986).

Therefore, Mr. Nieto's custodian for purposes of his habeas corpus petition challenging the execution of his Washington state sentence, is the warden of the prison where he is currently confined. *See, e.g., Brittingham v. United States*, 982 F.2d 378 (9<sup>th</sup> Cir. 1992); *Dunne v. Henman*, 875 F.2d 244, 249 (9<sup>th</sup> Cir. 1989).

The Court notes that Mr. Nieto has not yet provided service copies of his Petition.

Accordingly, it is **ORDERED**:

- (1) Mr. Nieto shall amend his petition to name his immediate custodian and warden of the Coyote Ridge Corrections Center and provide the Court with service copies of his petition, which shall reflect the properly named Respondent, **on or before June 19, 2009**.
- (2) The Court Clerk is directed to send a copy of this Order and a form 28 U.S.C. § 2254 petition to Mr. Nixon, and to note this matter for the Court's **June 19, 2009** calendar.

DATED this 19th day of May, 2009.

  
Karen L. Strombom  
United States Magistrate Judge